

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LEONID TREYGER,

Plaintiff,

-against-

GIO WINE & SPIRITS CORP.,
GBA 526 LLC,

Defendants.

Case No.: 23-cv-02099 (HG)

**AMENDED
ANSWER TO COMPLAINT
WITH AFFIRMATIVE DEFENSES
AND CROSS-CLAIM**

PLEASE TAKE NOTICE THAT the Defendant GIO WINE & SPIRITS CORP. hereby appears in the above captioned action by the undersigned, and as and for its Amended Answer to the Complaint, allege as follows:

1. Neither admits nor denies the allegations contained in Paragraph “1” of the Complaint inasmuch as it states a legal conclusion.
2. Neither admits nor denies the allegations contained in Paragraph “2” of the Complaint inasmuch as it states a legal conclusion.
3. Neither admits nor denies the allegations contained in Paragraph “3” of the Complaint inasmuch as it states a legal conclusion.
4. Neither admits nor denies the allegations contained in Paragraph “4” of the Complaint inasmuch as it states a legal conclusion.
5. Neither admits nor denies the allegations contained in Paragraph “5” of the Complaint inasmuch as it states a legal conclusion.
6. Neither admits nor denies the allegations contained in Paragraph “6” of the Complaint inasmuch as it states a legal conclusion.

7. Neither admits nor denies the allegations contained in Paragraph “7” of the Complaint inasmuch as it states a legal conclusion.

8. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “8” of the Complaint.

9. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “9” of the Complaint.

10. Admits the allegations contained in Paragraph “10” of the Complaint.

11. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “11” of the Complaint.

12. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “12” of the Complaint.

13. Neither admits nor denies the allegations contained in Paragraph “13” of the Complaint inasmuch as it states a legal conclusion.

14. Admits the allegations contained in Paragraph “14” of the Complaint.

15. Admits the allegations contained in Paragraph “15” of the Complaint except denies as to any ramp at the store.

16. Admits the allegations contained in Paragraph “16” of the Complaint.

17. Admits the allegations contained in Paragraph “17” of the Complaint.

18. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “18” of the Complaint.

19. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “19” of the Complaint.

20. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “20” of the Complaint.

21. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “21” of the Complaint.

22. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “22” of the Complaint.

23. Denies each and every allegation contained in Paragraph “23” of the Complaint.

24. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “24” of the Complaint.

25. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “25” of the Complaint.

26. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “26” of the Complaint.

27. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “27” of the Complaint.

28. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “28” of the Complaint.

29. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “29” of the Complaint.

30. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “30” of the Complaint.

31. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “31” of the Complaint.

32. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “32” of the Complaint.

33. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “33” of the Complaint.

34. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “34” of the Complaint.

35. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “35” of the Complaint.

36. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “36” of the Complaint.

37. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “37” of the Complaint.

38. Admits to the allegations contained in Paragraph “38” of the Complaint.

39. Denies each and every allegation contained in Paragraph “39” of the Complaint.

40. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “40” of the Complaint.

41. Denies each and every allegation contained in Paragraph “41” of the Complaint.

42. Neither admits nor denies the allegations contained in Paragraph “42” of the Complaint inasmuch as it states a legal conclusion.

43. Neither admits nor denies the allegations contained in Paragraph “43” of the Complaint inasmuch as it states a legal conclusion.

44. Neither admits nor denies the allegations contained in Paragraph “44” of the Complaint inasmuch as it states a legal conclusion.

45. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “45” of the Complaint.

46. Neither admits nor denies the allegations contained in Paragraph “46” of the Complaint inasmuch as it states a legal conclusion.

47. Neither admits nor denies the allegations contained in Paragraph “47” of the Complaint inasmuch as it states a legal conclusion.

48. Neither admits nor denies the allegations contained in Paragraph “48” of the Complaint inasmuch as it states a legal conclusion.

49. Neither admits nor denies the allegations contained in Paragraph “49” of the Complaint inasmuch as it states a legal conclusion.

50. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “50” of the Complaint.

51. Neither admits nor denies the allegations contained in Paragraph “51” of the Complaint inasmuch as it states a legal conclusion.

52. Neither admits nor denies the allegations contained in Paragraph “52” of the Complaint inasmuch as it states a legal conclusion.

53. Neither admits nor denies the allegations contained in Paragraph “53” of the Complaint inasmuch as it states a legal conclusion.

54. Denies each and every allegation contained in Paragraph “54” of the Complaint.

55. Neither admits nor denies the allegations contained in Paragraph “55” of the Complaint inasmuch as it states a legal conclusion.

56. Neither admits nor denies the allegations contained in Paragraph “56” of the Complaint inasmuch as it states a legal conclusion.

57. Neither admits nor denies the allegations contained in Paragraph “57” of the Complaint inasmuch as it states a legal conclusion.

58. Neither admits nor denies the allegations contained in Paragraph “58” of the Complaint inasmuch as it states a legal conclusion.

59. Neither admits nor denies the allegations contained in Paragraph “59” of the Complaint inasmuch as it states a legal conclusion.

60. Denies each and every allegation contained in Paragraph “60” of the Complaint.

61. Denies each and every allegation contained in Paragraph “61” of the Complaint.

62. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “62” of the Complaint.

63. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “63” of the Complaint.

64. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “64” of the Complaint.

65. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “65” of the Complaint.

66. Denies each and every allegation contained in Paragraph “66” of the Complaint.

67. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “67” of the Complaint.

68. Admits to the allegations contained in Paragraph “68” of the Complaint.

69. Denies each and every allegation contained in Paragraph “69” of the Complaint.

70. Denies each and every allegation contained in Paragraph “70” of the Complaint.

71. Admits to the allegations contained in Paragraph “71” of the Complaint.

72. Denies each and every allegation contained in Paragraph “72” of the Complaint.

73. Denies each and every allegation contained in Paragraph “73” of the Complaint.

74. Denies each and every allegation contained in Paragraph “74” of the Complaint.

75. Denies each and every allegation contained in Paragraph “75” of the Complaint.

76. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “76” of the Complaint.

77. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “77” of the Complaint.

78. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “78” of the Complaint.

79. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “79” of the Complaint.

80. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “80” of the Complaint.

81. Denies each and every allegation contained in Paragraph “81” of the Complaint.

82. Denies each and every allegation contained in Paragraph “82” of the Complaint.

83. Admits to the allegations contained in Paragraph “83” of the Complaint.

84. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “84” of the Complaint.

85. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “85” of the Complaint.

86. Denies each and every allegation contained in Paragraph “86” of the Complaint.

87. Denies each and every allegation contained in Paragraph “87” of the Complaint.

88. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “88” of the Complaint.

89. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “89” of the Complaint.

90. Denies each and every allegation contained in Paragraph “90” of the Complaint.

91. Denies each and every allegation contained in Paragraph “91” of the Complaint.

92. Denies each and every allegation contained in Paragraph “92” of the Complaint.

93. Denies each and every allegation contained in Paragraph “93” of the Complaint.

94. Denies each and every allegation contained in Paragraph “94” of the Complaint.

95. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “95” of the Complaint.

96. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “96” of the Complaint.

97. Denies each and every allegation contained in Paragraph “97” of the Complaint.

98. Denies each and every allegation contained in Paragraph “98” of the Complaint.

99. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “99” of the Complaint.

100. Denies each and every allegation contained in Paragraph “100” of the Complaint.

101. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “101” of the Complaint.

102. Denies each and every allegation contained in Paragraph “102” of the Complaint.

103. Denies each and every allegation contained in Paragraph “103” of the Complaint.

104. Denies each and every allegation contained in Paragraph “104” of the Complaint.

105. Denies each and every allegation contained in Paragraph “105” of the Complaint.

106. Denies each and every allegation contained in Paragraph “106” of the Complaint.

107. Denies each and every allegation contained in Paragraph “107” of the Complaint.

108. Denies each and every allegation contained in Paragraph “108” of the Complaint.

109. Denies each and every allegation contained in Paragraph “109” of the Complaint.

110. Admits to the allegations contained in Paragraph “110” of the Complaint.

111. Denies each and every allegation contained in Paragraph “111” of the Complaint.

112. Denies each and every allegation contained in Paragraph “112” of the Complaint.

113. Neither admits nor denies the allegations contained in Paragraph “113” of the Complaint inasmuch as it states a legal conclusion.

114. Denies each and every allegation contained in Paragraph “114” of the Complaint.

115. Neither admits nor denies the allegations contained in Paragraph “115” of the Complaint inasmuch as it states a legal conclusion.

116. Neither admits nor denies the allegations contained in Paragraph “116” of the Complaint inasmuch as it states a legal conclusion.

117. Neither admits nor denies the allegations contained in Paragraph “117” of the Complaint inasmuch as it states a legal conclusion.

118. Neither admits nor denies the allegations contained in Paragraph “118” of the Complaint inasmuch as it states a legal conclusion.

119. Neither admits nor denies the allegations contained in Paragraph “119” of the Complaint inasmuch as it states a legal conclusion.

120. Denies each and every allegation contained in Paragraph “120” of the Complaint.

121. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “121” of the Complaint.

122. Neither admits nor denies the allegations contained in Paragraph “122” of the Complaint inasmuch as it states a legal conclusion.

123. Lacks knowledge and information sufficient to form a belief to either admit or deny the allegations contained in Paragraph “123” of the Complaint.

124. Neither admits nor denies the allegations contained in Paragraph “124” of the Complaint inasmuch as it states a legal conclusion.

125. Neither admits nor denies the allegations contained in Paragraph “125” of the Complaint inasmuch as it states a legal conclusion.

126. Denies each and every allegation contained in Paragraph “126” of the Complaint.

127. Denies each and every allegation contained in Paragraph “127” of the Complaint.

128. Denies each and every allegation contained in Paragraph “128” of the Complaint.

129. Denies each and every allegation contained in Paragraph “129” of the Complaint.

130. Denies each and every allegation contained in Paragraph “130” of the Complaint.

131. Denies each and every allegation contained in Paragraph “131” of the Complaint.

132. Denies each and every allegation contained in Paragraph “132” of the Complaint.

133. Denies each and every allegation contained in Paragraph “133” of the Complaint.

134. Denies each and every allegation contained in Paragraph “134” of the Complaint.

135. Denies each and every allegation contained in Paragraph “135” of the Complaint.

136. Denies each and every allegation contained in Paragraph “136” of the Complaint.

137. Denies each and every allegation contained in Paragraph “137” of the Complaint.

138. Denies each and every allegation contained in Paragraph “138” of the Complaint.

139. Denies each and every allegation contained in Paragraph “139” of the Complaint.

140. Denies each and every allegation contained in Paragraph “140” of the Complaint.

141. Neither admits nor denies the allegations contained in Paragraph “141” of the Complaint inasmuch as it states a legal conclusion.

142. Denies each and every allegation contained in Paragraph “142” of the Complaint.

143. Denies each and every allegation contained in Paragraph “143” of the Complaint.

144. Denies each and every allegation contained in Paragraph “144” of the Complaint.

145. Denies each and every allegation contained in Paragraph “145” of the Complaint.

146. Neither admits nor denies the allegations contained in Paragraph “146” of the Complaint inasmuch as it states a legal conclusion.

147. Neither admits nor denies the allegations contained in Paragraph “147” of the Complaint inasmuch as it states a legal conclusion.

148. Neither admits nor denies the allegations contained in Paragraph “148” of the Complaint inasmuch as it states a legal conclusion.

149. Denies each and every allegation contained in Paragraph “149” of the Complaint.

150. Denies each and every allegation contained in Paragraph “150” of the Complaint.

151. Denies each and every allegation contained in Paragraph “151” of the Complaint.

152. Denies each and every allegation contained in Paragraph “152” of the Complaint.

153. Denies each and every allegation contained in Paragraph “153” of the Complaint.

154. Neither admits nor denies the allegations contained in Paragraph “154” of the Complaint inasmuch as it states a legal conclusion.

155. Denies each and every allegation contained in Paragraph “155” of the Complaint.

156. Denies each and every allegation contained in Paragraph “156” of the Complaint.

157. Denies each and every allegation contained in Paragraph “157” of the Complaint.

158. Denies each and every allegation contained in Paragraph “158” of the Complaint.

159. Denies each and every allegation contained in Paragraph “159” of the Complaint.

160. Denies each and every allegation contained in Paragraph “160” of the Complaint.

161. Denies each and every allegation contained in Paragraph “161” of the Complaint.

162. Denies each and every allegation contained in Paragraph “162” of the Complaint.

163. Denies each and every allegation contained in Paragraph “163” of the Complaint.

164. Denies each and every allegation contained in Paragraph “164” of the Complaint.

165. Neither admits nor denies the allegations contained in Paragraph “165” of the Complaint inasmuch as it states a legal conclusion.

166. Denies each and every allegation contained in Paragraph “166” of the Complaint.

167. Denies each and every allegation contained in Paragraph “167” of the Complaint.

168. Denies each and every allegation contained in Paragraph “168” of the Complaint.

169. Denies each and every allegation contained in Paragraph “169” of the Complaint.

170. Denies all incorporated references in Paragraph “170” of the Complaint to the extent that such denials are set forth hereinabove.

171. Neither admits nor denies the allegations contained in Paragraph “171” of the Complaint inasmuch as it states a legal conclusion.

172. Admits the allegations contained in Paragraph “172” of the Complaint.

173. Denies each and every allegation contained in Paragraph “173” of the Complaint.

174. Denies each and every allegation contained in Paragraph “174” of the Complaint.

175. Denies each and every allegation contained in Paragraph “175” of the Complaint.

176. Denies each and every allegation contained in Paragraph “176” of the Complaint.

177. Denies each and every allegation contained in Paragraph “177” of the Complaint.

178. Denies each and every allegation contained in Paragraph “178” of the Complaint.

179. Denies each and every allegation contained in Paragraph “179” of the Complaint.

180. Denies each and every allegation contained in Paragraph “180” of the Complaint.

181. Denies each and every allegation contained in Paragraph “181” of the Complaint.

182. Denies each and every allegation contained in Paragraph “182” of the Complaint.

183. Denies all incorporated references in Paragraph “183” of the Complaint to the extent that such denials are set forth hereinabove.

184. Denies each and every allegation contained in Paragraph “184” of the Complaint.

185. Denies each and every allegation contained in Paragraph “185” of the Complaint.

186. Neither admits nor denies the allegations contained in Paragraph “186” of the Complaint inasmuch as it states a legal conclusion.

187. Denies all incorporated references in Paragraph “187” of the Complaint to the extent that such denials are set forth hereinabove.

188. Neither admits nor denies the allegations contained in Paragraph “188” of the Complaint inasmuch as it states a legal conclusion.

189. Denies each and every allegation contained in Paragraph “189” of the Complaint.

190. Denies each and every allegation contained in Paragraph “190” of the Complaint.

191. Denies each and every allegation contained in Paragraph “191” of the Complaint.

192. Denies each and every allegation contained in Paragraph “192” of the Complaint.

193. Denies each and every allegation contained in Paragraph “193” of the Complaint.

194. Denies each and every allegation contained in Paragraph “194” of the Complaint.

195. Denies each and every allegation contained in Paragraph “195” of the Complaint.

196. Denies each and every allegation contained in Paragraph “196” of the Complaint.

197. Denies each and every allegation contained in Paragraph “197” of the Complaint.

198. Denies each and every allegation contained in Paragraph “198” of the Complaint.

199. Denies each and every allegation contained in Paragraph “199” of the Complaint.

200. Denies each and every allegation contained in Paragraph “200” of the Complaint.

201. Neither admits nor denies the allegations contained in Paragraph “201” of the Complaint inasmuch as it states a legal conclusion.

202. Denies each and every allegation contained in Paragraph “202” of the Complaint.

203. Denies each and every allegation contained in Paragraph “203” of the Complaint.

204. Denies each and every allegation contained in Paragraph “204” of the Complaint.

205. Denies each and every allegation contained in Paragraph “205” of the Complaint.

AFFIRMATIVE DEFENSES

206. Without admitting or acknowledging that Defendant bears any burden of proof, Defendant asserts the following affirmative defenses. Defendant intends and specifically reserves the right to rely upon any additional defenses that become available or apparent while this action is pending and reserve the right to amend this answer in order to and to otherwise assert any such further defenses.

FIRST AFFIRMATIVE DEFENSE

207. The Plaintiff and counsel have not acted in good faith in commencing this action. Plaintiff commenced 13 similar ADA actions in the U.S. District Court for the Eastern District for the alleged violations, using a boiler plate complaint and seeking payment of nominal damages but exorbitant legal fees. Such actions are not condoned by this Court.

SECOND AFFIRMATIVE DEFENSE

208. Plaintiff's claims are barred, in whole or in part, by the failure to satisfy the statutory and/or administrative prerequisites to the bringing of this action.

THIRD AFFIRMATIVE DEFENSE

209. Federal law does not require Defendant to alter or modify the property.

FOURTH AFFIRMATIVE DEFENSE

210. Defendant has not engaged in any intentional discrimination to prevent or inhibit access to the property or to any of the facilities therein.

FIFTH AFFIRMATIVE DEFENSE

211. Defendant has not denied Plaintiff physical access to the property or to any of the facilities therein.

SIXTH AFFIRMATIVE DEFENSE

212. To the extent that Defendant has not made alterations to its space that Plaintiff alleges should have been made, such changes were not and are not required under federal, New York State or New York City law, and any requirement to make those changes would impose an undue burden upon Defendant and would not be readily achievable or feasible.

SEVENTH AFFIRMATIVE DEFENSE

213. Modifications of Defendant's policies, practices and procedures, or the provision of auxiliary aids or services, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations and there is no duty to modify.

EIGHTH AFFIRMATIVE DEFENSE

214. Plaintiff lacks standing to pursue the claims asserted, and, to the extent Plaintiff has standing to bring the Complaint, Plaintiff lacks standing to challenge any alleged barriers to access not specifically encountered by him.

NINTH AFFIRMATIVE DEFENSE

215. Plaintiff's claims are barred to the extent the relief Plaintiff requests is not mandated by federal, state or city law.

TENTH AFFIRMATIVE DEFENSE

216. Plaintiff has adequate legal remedies and therefore Plaintiff is not entitled to injunctive relief or equitable relief.

ELEVENTH AFFIRMATIVE DEFENSE

217. Plaintiff is not entitled to injunctive or equitable relief because Plaintiff has not suffered, and will not suffer, any irreparable harm or injury.

TWELFTH AFFIRMATIVE DEFENSE

218. Defendant exercised reasonable care to ensure compliance with all federal, state and city laws, regulations and/or ordinances, and Plaintiff unreasonably failed and/or refused to take advantage of the accommodations provided, or otherwise to avoid harm.

THIRTEENTH AFFIRMATIVE DEFENSE

219. To the extent it is a prevailing party as to any claim alleged in the complaint, Defendant reserves the right to seek all permissible relief authorized under federal, state and/or city laws, regulations and/or ordinances, and/or court rules applicable to actions brought in this Court.

FOURTEENTH AFFIRMATIVE DEFENSE

220. Defendant acted in good faith and its conduct conformed to all applicable statutes, regulations and industry standards existing at the time of such conduct.

AS AND FOR A FIRST CROSS-CLAIM

(1) The subject ramp was constructed by the co-defendant GBA 526 LLC or its predecessor in interest.

(2) Defendant Gio Wines & Spirits Corp. has no right to modify the subject ramp or door.

(3) If Plaintiff is entitled to any damages, it is solely or substantially as a result of the actions of co-defendant GBA 526 LLC.

(4) If Defendant Gio Wines & Spirits Corp. is found liable, it seeks judgment over against the co-defendant GBA 526 LLC.

WHEREFORE, Defendant Gio Wine & Spirits Corp. demands judgment dismissing the Complaint together with such other relief as to the Court deems just and proper, and for judgment over against co-defendant GBA 526 LLC if there is any liability.

Dated: New York, New York
August 10, 2023

Respectfully submitted,

DUNNINGTON, BARTHOLOW & MILLER LLP

By: /s/ Robert N. Swetnick
Robert N. Swetnick, Esq.
Attorneys for Defendant Gio Wine & Spirits Corp.
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New York, New York 10169
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Email: rswetnick@dunnington.com